

The Broadcast Team, Inc.
9 Sunshine Blvd.
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Re: Response to Request For Comments/Amendment to the TSR

The Broadcast Team, Inc. submits these comments in response to the Federal Trade Commission's request for comments regarding the Telemarketing Sales Rule (TSR), 16 CFR Part 310. Currently, the TSR does not have an explicit exception that allows the delivery of a prerecorded message to consumers with whom the seller has an established business relationship. The Broadcast Team, Inc. is a service provider that can broadcast thousands of prerecorded messages to residences and businesses around the country. We have been in business since 1992 and we have always endeavored to comply with all laws applicable to our services.

Currently, the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243, which amended the Communications Act of 1934, allows a seller to deliver a prerecorded message to a consumer with whom the seller has an established business relationship, see 47 CFR 64.1200 (a)(2)(iv). An interpretation of the TSR's current provisions that would prohibit prerecorded messages would be in direct contrast to the TCPA. As TBT has always endeavored to comply with all applicable laws, it is difficult to understand how these two different provisions of the law are allowed to exist.

Our clients include national insurance agencies, major financial institutions and numerous cable television companies. Each of our clients has expressed that their customers want to be contacted so as to be informed of new developments and potential problems with service. The most efficient way to contact a customer is through delivery of a prerecorded voice message. In fact, the majority of our client's customers prefer to be contacted by this method. Because there is an existing business relationship, there is an inherent ability for a call recipient to have their name placed on an entity specific do not call list. The TCPA also requires that a number be mentioned in the body of the message as well as in the caller identification of a consumer's telephone. This provision allows a consumer to return the call and asked to be placed on a do not call list.

Although we agree that a clarification to the TSR should be made specifically allowing for prerecorded calls to customers, we feel strongly that the scheme suggested by the Voice Mail Broadcasting Corporation regarding implementing an automated process to communicate do-not-call requests should not be considered. The proposal to allow for a call recipient to be able to contact a live person during the automated call sequence is burdensome, impractical, and unnecessary for communications between businesses and their existing customers. Regarding the impracticality of this scheme, note that prerecorded messages are required to be delivered during the day from 8:00am to 9:00pm

local time to the call recipients. Many of the recipients of prerecorded messages are located in time zones other than that of the business placing the call. Consider the instance of a business located in the Eastern Time zone that places calls to their national customer base at 8:00pm local time, including calls to both Alaska and Hawaii. It would be burdensome for this business to be required to have a live person available at the time the calls are placed into Hawaii and Alaska (1:00am EST for calls placed into Alaska and Hawaii at 8:00pm local time). In addition to the impracticality of this requirement, many sellers of goods and services could not afford these additional costs.

Regarding our contention that the Voice Mail Broadcasting scheme is unnecessary, we would point out that the identification provisions of the TCPA, which requires all recorded messages to contain the telephone number or address of the party on whose behalf the call is placed, is a necessary provision to assist consumers in cases where calls have been placed by entities that the consumer is not familiar with. The identification provision assists consumers in quickly finding these businesses in cases where the consumer wishes to be removed from the sellers calling files. But for the specific situation being considered by the FTC in this matter, i.e. calls to customers, the identification provisions that are already in place via the TCPA are more than adequate, as these customers should have no trouble identifying the party to whom their request should be directed, as they have an existing relationship with the caller.

A better solution than that offered by the Voice Mail Broadcasting scheme is to amend the TSR to allow prerecorded calls to customers and to require prerecorded messages to include the telephone number or address of the party on whose behalf the call was placed (as is required in the TCPA). This would provide consumers a convenient mechanism for communicating any do-not-call requests and would bring the TSR and TCPA into better alignment.

The TSR currently has an exception for a live telemarketer to place a call on behalf of a seller to a customer with whom a seller has an existing business relationship. See 16 CFR 310.4(b)(1)(iii)(B)(ii). This exception should apply to the delivery of prerecorded messages as well, as there is an existing business relationship established. Inherent in the relationship is the ability of a customer to identify the caller and with the return number required to be in the body of the message, as well as in the recipient's caller identification, thereby giving the call recipient ample opportunity to call during business hours and place a do not call request.

Clearly, congress did not intend for these two laws to conflict with each other. Having to comply with both the TSR and the TCPA, and having those laws conflict with each other, imposes a heavy burden on small companies such as TBT and creates confusion with consumers. Congress intended for there to be one uniform set of laws, consistent and clear, so as to ease the burden on small companies as well as to prevent consumer confusion. The scheme put in place

has worked since the inception of the TCPA in 1991. The Federal Trade Commission should take the opportunity to bring the TSR into conformity with the TCPA and amend the law so as to allow for the delivery of a prerecorded message to a customer with whom which a seller has an existing business relationship, without adding any additional technical requirements regarding the method in which these calls are delivered.

Sincerely,

Robert J. Tuttle
CEO
The Broadcast Team, Inc.